

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROLAND DEWITT PUGH,

Plaintiff, No. CIV S-05-0002 FCD GGH P

vs.

DR. MERICLE,

Defendant. FINDINGS AND RECOMMENDATIONS

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Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. By Order, filed on October 30, 2006, plaintiff was granted thirty days to file an application for leave to proceed in forma pauperis, using the form provided by the court with that order. Although plaintiff had paid the fee in full at the outset of this case on January 3, 2005, he had been unable to serve the sole defendant, Dr. Mericle, and in the October 30, 2006, Order, plaintiff was given one final opportunity to attempt to serve this complaint by providing the requisite application to obtain in forma pauperis status so that, should he qualify, the court could direct the U.S. Marshal to direct service upon defendant Mericle. Plaintiff was cautioned that failure either to file the required application or to fail to qualify for in forma pauperis status upon the court's review of any such application, the court would recommend dismissal of this action, as it appeared to be futile for plaintiff to be granted any further opportunity to attempt to serve

1 this complaint. Plaintiff has not responded to the court's October 30, 2006, Order, and the time  
2 for doing so has long expired.

3 Therefore, for the reasons set forth herein and those presented in more detail in the  
4 Order, filed on October 30, 2006, the court will recommend dismissal without prejudice of this  
5 action.

6 Accordingly, IT IS RECOMMENDED that this action be dismissed without  
7 prejudice.

8 These findings and recommendations are submitted to the United States District  
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
10 days after being served with these findings and recommendations, plaintiff may file written  
11 objections with the court. Such a document should be captioned "Objections to Magistrate  
12 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections  
13 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
14 Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: 4/6/07

/s/ Gregory G. Hollows

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16 UNITED STATES MAGISTRATE JUDGE

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